



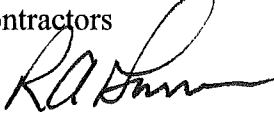
STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
GOVERNOR

EUGENE A. CONTI, JR.
SECRETARY

September 2, 2010

NOTICE TO: All Prequalified Contractors

FROM: R.A. Garriss, P.E. 
State Contract Officer

SUBJECT: Changes to NCDOT Minority Business Enterprise Qualifications

This letter is to advise you of changes to the North Carolina Department of Transportation's Minority Business and Women Business Enterprise Program ("MB/WB Program") resulting from legislative amendments to the general statute governing the program.

As you may be aware, the MB/WB Program was challenged as being unconstitutional. Based upon a Disparity Study that was completed in 2004, the United States Court of Appeals for the Fourth Circuit found there was a sufficient evidentiary basis in the 2004 study for the MB program for businesses owned by African Americans and American Indians. However, the court found there was not a sufficient basis in evidence for businesses owned by women, or for Asian Americans and Hispanic Americans.

In 2009, DOT received a new disparity study conducted by Euquant, entitled "Minority Business Opportunity: A Disparity Study of NCDOT's State and Federal Programs." The 2009 Study examined whether disparity in contracting was present in DOT state-funded construction projects and made recommendations for further improvements to the DOT's program.

On July 8, 2010, shortly before the Fourth Circuit Court of Appeals opinion, the General Assembly passed House Bill 1734 which included amendments to the MB/WB statute. Governor Perdue signed the legislation into law on August 2, 2010. The amendments included four matters that affect how the MB/WB Program will be operated. First, the bill changes the statutory reference from the 2004 disparity study to the 2009 disparity study and directs DOT to design the program based upon the findings of this study. Second, the agency is directed to set aspirational goals for participation every three years (rather than every year) to make the program consistent with the federal Disadvantaged Business Enterprise ("DBE") program. Third, the bill changes the definition of "Women" to formalize the treatment of firms with potential dual certification.

Finally, the bill extends the sunset of the program until 2014.

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As a result of the changes to the statute during the 2010 session, DOT has examined the MB/WB Program in light of the 2009 disparity study and guidance provided by the Fourth Circuit opinion in the *H.B. Rowe* case. The 2009 disparity study provides an evidentiary basis for participation in the MB/WB Program that differs from that provided in the 2004 disparity study which was reviewed by the *H.B. Rowe* court. As a result of this examination, DOT has determined that African-American owned firms, Hispanic owned firms and women owned firms will be eligible for participation in the MB/WB Program at this time. These changes will be effective immediately, and the Transportation Directory has been updated to reflect the noted changes. Please note that these changes are directed solely to the MB/WB Program for state-funded projects. Unless DOT is directed otherwise by the Federal Highway Administration, the agency's operation of the federal DBE Program for federally-funded projects will not change.

Should you have any questions, please feel free to contact Mr. Michael McKoy or Ms. Terry Canales, P.E., of the Contractual Services Unit at 919-733-7174.